

## Message

**From:** Dorka, Lilian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AF796221E00A4A338CEA3C72ADBD0D57-DORKA, LILL]  
**Sent:** 8/9/2017 9:26:49 PM  
**To:** Johnston, Tom [TLJ@adem.alabama.gov]  
**CC:** Sibley, Shawn S [SSibley@adem.alabama.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Martinez, Brittany [Martinez.Brittany@epa.gov]; Biffi, Betsy [Biffi.Betsy@epa.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Johnson, Johahna [Johnson.Johahna@epa.gov]; Redden, Kenneth [Redden.Kenneth@epa.gov]  
**Subject:** RE: Alabama DEM Title VI Investigation (Arrowhead Retaliation Claim)  
**Attachments:** Retaliation Response - Attachment (08-09-2017).pdf; Exhibit A (EMC Minutes)(10-16-2009).pdf

Thanks very much Tom. We will review this information and let you know if we have any follow up questions. Lilian

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**From:** Johnston, Tom [mailto:TLJ@adem.alabama.gov]  
**Sent:** Wednesday, August 9, 2017 5:13 PM  
**To:** Dorka, Lilian <Dorka.Lilian@epa.gov>  
**Cc:** Sibley, Shawn S <SSibley@adem.alabama.gov>  
**Subject:** Alabama DEM Title VI Investigation (Arrowhead Retaliation Claim)

August 9, 2017

Dear Lilian:

As requested, this will provide ADEM's statement in response to allegations of retaliation arising from the August 13, 2013, meeting of the Alabama Environmental Management Commission (EMC).

The policy and practice of the EMC that resulted in the denial of certain Title VI complainant's request to engage in public comment was and is grounded in sound legal advice and is in keeping with the Commission's historical practice of avoiding non-deliberative public comment on pending matters, a practice not unique to the EMC. The requests to speak were denied not because the requesters had filed a Title VI complaint per se, but because they had filed a complaint generally, thereby moving the subject matter they wished to discuss publicly to another forum for investigation and determination. Once the jurisdiction of the foreign forum is triggered, the reasoning that counsels against public officials engaging in public comment on pending matters applies regardless of subject matter. Here, the requesters were not denied because of "who" they were [Title VI complainants], but because of "what" they wanted to talk about, and the matters they wanted to talk about were off limits for public comment under a generic policy based on reasons unrelated to their specific Title VI complaint.

Under the burden-shifting analysis you indicated your office would undertake, the Department provides the above statement as the non-discriminatory reason for the actions taken by the EMC. The attached bulleted list demonstrates the EMC's historical practice in this area, and cites examples where other, non-Title VI requesters were likewise denied for the same policy reason. Also are examples where Title VI complainants were allowed to speak about unrelated, non-Title VI matters. Finally, we cite statements from members of the EMC and the EMC's attorney during a transcribed public hearing attesting to the merits of the Commission's practice. These examples support the EMC's non-discriminatory reason and undercut any allegation of pretext.

We trust this response will enable your office to conclude your investigation into these matters.

Thomas L. Johnston  
 General Counsel



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